IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 474 OF 2003.
WITH
CRIMINAL APPEAL NO. 475 OF 2003.

Union of India. ... Appellant.
(In both appeals)

Versus.

Suresh Kumar U.Jain. ... Respondent.
(In both appeals)

Shri R.F.Lambay, P.P. for the Appellant in both appeals.
Shri A.S.Shitole, A.P.P. for State.

CORAM : ABHAY S.OKA, J.

DATED : 4th October, 2006.

P.C.:

1. Heard Shri Lambay for the Appellant. The facts of both the Appeals are same and therefore, I am referring to the facts of Criminal Appeal No.474 of 2003. I have heard Shri Lambay for the Appellant on the prayer for grant of leave to prefer Appeal. The acquittal of the 1st Respondent is under section 8(1) and 8(2) of the Foreign Exchange Regulation Act, 1973 punishable under section 56 of the said Act. The case of the prosecution is based on the seizure of the Indian Currency from the 1st Respondent which is reflected in the seizure panchanama. The prosecution also relied upon the statement of the Respondent No.1 which has been retracted by him subsequently.

2. The learned Magistrate held that in view of the retraction of the statement, the same cannot be relied upon unless the contents thereof were corroborated by a

direct and/or circumstantial evidence.

3. The finding recorded by the learned Magistrate is that for proving the seizure panchanama, the panch witnesses were not examined on the ground that they were not traceable. Further finding is recorded that P.W.1 Rane, in his cross-examination pointed out that he had no knowledge of the contents of the panchanama. The said witness also admitted that he did not remember as to who dictated the panchanama to the scribe. He was not able to say whether he himself had dictated the panchanama. A doubt is also created about the place at which the panchanama was made. Thus the learned Judge came to the conclusion that panchanama regarding seizure of Indian currency was not at all proved. The learned Judge has held that there was no corroboration to the retracted statement of the Respondent No.1 and hence the order of acquittal has been passed.

4. After hearing the learned Advocate appearing for the Appellant I find that the view taken by the learned Magistrate is a possible view which could have been taken on the basis of the evidence on record. No case is made out for grant of leave. Prayer for leave is rejected. The Appeals are dismissed.

Judge.